

PATENT**REMARKS**

In the Office Action, the Examiner rejected claims 26-28 and 32-53 under 35 USC §103(a). The rejection of these claims is fully traversed below.

Claims 27, 35, 39, 41, 49, 51 and 52 have been amended to further clarify the subject matter regarded as the invention. New claim 54 has been added to the application. To reduce claims fees, claim 28 has been cancelled from the application without prejudice or disclaimer. Claims 26-28 and 32-54 are pending in the application. Reconsideration of the application is respectfully requested based on the following remarks.

INFORMATION DISCLOSURE STATEMENT

The Examiner is reminded to process and return PTO Form 1449 associated with the Information Disclosure Statement filed February 11, 2009.

PATENTABILITY OF CLAIMS

In the Office Action, the Examiner rejected claims 39-44 and 47-53 under 35 U.S.C. § 103(a) as unpatentable over Swab et al., U.S. Patent No. 6,929,365, in view of Horiguchi, U.S. Patent No. 7,031,667, and further in view of Spitzer, U.S. Patent No. 6,091,546; and rejected claims 26-28, 32-38, 44 and 45 under 35 U.S.C. § 103(a) as unpatentable over Swab et al. in view of Horiguchi and further in view of Spitzer and further view of Himberg et al., U.S. Patent No. 6,912,386. These rejections are fully traversed below. It appears that claim 46 has not been rejected.

Initially, it should be noted that claims 26-28 and 32-38 were previously allowed. Presently, however, the Examiner newly cites Himberg et al. in combination with three other references in order to support the current rejections. Applicants respectfully disagree.

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Claim 27 and its dependent claims

Claim 27 pertains to a method for operating a pair of eyeglasses having wireless communication circuitry and an operation indicator. Among other things, claim 27 recites:

monitoring, via electronic circuitry at least partially embedded in the glasses, the wireless communication circuitry to determine an operational condition of the wireless communication circuitry; and

controlling, by the electronic circuitry, the at least one operation indicator based on the operational condition of the wireless communication circuitry as determined by said monitoring,

wherein the operational condition indicates at least whether the wireless communication circuitry is in use,

On page 6 of the Office Action, the Examiner admits that Swab et al. does not disclose various limitations of claim 27, including an operation indicator or its use as well as monitoring wireless communication circuitry of a pair of eyeglasses to determine operational conditions. In view of these and other deficiencies, the Examiner combines Horiguchi with Swab et al., Spitzer and Himberg et al. in order to reject claim 27.

Applicants disagree that the use of Horiguchi in any way overcomes the deficiencies of Swab et al. Horiguchi pertains to a portable telephone, *not a pair of eyeglasses*. Given the distinct nature of these products, there would be no motivation for one skilled in the art to combine the portable telephone of Horiguchi with the eyeglasses of Swab et al. Similarly, Spitzer pertains to a mobile device, namely, a portable telephone, and thus there would be a lack the necessary motivation for combination with Swab et al. as proposed by the Examiner.

Further, even if Horiguchi is somehow combinable with Swab et al. the noncommunicative mode indicating lamp 1 of Horiguchi illuminates when the portable telephone is functioning in a noncommunicative mode (i.e., not communicating). Indeed, the expressed objective of Horiguchi is to notify

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persons around a user of the portable telephone that the portable telephone is functioning in the noncommunicative mode. Horiguchi, col. 3, lines 23-27. In contrast, the operation indicator as recited in claim 27 indicates whether the wireless communication circuitry of the eyeglasses is in use. Specifically, it should also be noted that claim 27 recites "the operational condition indicates at least whether the wireless communication circuitry is in use." Thus, if anything, the noncommunicative mode indicating lamp 1 of Horiguchi teaches away from indicating operation of wireless communication circuitry as recited in claim 27.

Moreover, in Horiguchi, the setting of either the communicative mode or the non-communicative mode is determined by an interchanging key 6. See Abstract. "[W]hen a interchanging key 6 is pushed down, the noncommunicative mode-indicating lamp 1 lights up, and notif[ies] the user and the persons around him that the portable telephone is functioning in the noncommunicative mode...." Horiguchi, col. 5, lines 54-56. Horiguchi does not teach or suggest any sort of monitoring activity of its portable telephone for use in controlling an operation indicator. **If anything, the user action --pressing of the interchanging key 6-- required by Horiguchi to switch modes would teach away from monitoring an operational condition of wireless communication circuitry to control the operation indicator.**

Still further, the operation indicator recited in claim 27 is part of a pair of eyeglasses; not a conventional portable telephone as in Horiguchi. The noncommunicative mode indicating lamp 1 of Horiguchi is not taught or suggested as being anyway useful or applicable on a pair of eyeglasses as recited in claim 27.

Thus, Horiguchi fails to overcome the deficiencies of Swab et al. Accordingly, it is submitted that claim 27 is patentably distinct from any combination of Swab et al. in view of Horiguchi. Spitzer and Himberg et al. were cited by the Examiner for other purposes, but are likewise also deficient.

Additional limitations recited in independent claim 27, or its dependent claims, are not further discussed as the above-discussed limitations are clearly

sufficient to distinguish the claimed invention from Swab et al. In view of Horiguchi, Spitzer and Himberg et al.

Claim 35 and its dependent claims

Claim 35 pertains to a method for operating a pair of eyeglasses having wireless communication circuitry and an operation indicator. For at least the reasons noted with respect to claim 27, it is submitted that claim 35 is patentably distinct from any combination of Swab et al. in view of Horiguchi, Spitzer and Himberg et al. It is also noted that claim 35 recites "receiving sensor information from the at least one sensor, the sensor providing sensor information that pertains to a mood of the user...." On page 7 of the Office Action, the Examiner appears to suggest that Himberg et al. teaches a sensor for a user's mood. However, it is submitted that Himberg et al. provides no teaching or suggestion for any consideration or sensing of a user's mood. Additional limitations recited in independent claim 35, or its dependent claims, are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from Swab et al. in view of Horiguchi, Spitzer and Himberg et al.

Claim 39 and its dependent claims

Claim 39 pertains to a method for operating a pair of eyeglasses having wireless communication circuitry and an indicator. Among other things, claim 39 recites:

monitoring, via electronic circuitry, the wireless communication circuitry to determine an operational condition of the wireless communication circuitry, the operational condition indicating at least whether the wireless communication circuitry is in use;

receiving sensor information from the at least one sensor;
and

controlling, by the electronic circuitry, the at least one indicator based on the operational condition of the wireless communication circuitry as determined by said monitoring as well as based on the sensor information as obtained by said receiving,

wherein the wireless communication circuitry and the electronic circuitry are at least partially internal to the eyeglasses.

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As noted above, in Horiguchi a user is required to push an Interchanging key 6 to cause a noncommunicative mode-indicating lamp 1 to light up. Consequently, Horiguchi does not teach or suggest in any way the monitoring of wireless communication circuitry to determine operational condition. Nor does Horiguchi teach or suggest any capability to control the indicator based on the operational condition of the wireless communication circuitry determined by the monitoring. The Examiner also relies on Spitzer for a position sensor. However, the noncommunicative mode-indicating lamp 1 in Horiguchi is specifically dedicated to indicating "noncommunicative mode" and thus would teach away from the Examiner's proposed combination of Swab et al., Horiguchi and Spitzer.

Thus, it is respectfully requested that the Examiner withdraw the rejection of claims 26-28 and 32-53 under 35 U.S.C. § 103(a).


SUMMARY

It is submitted that the rejections under 35 U.S.C. § 103(a) have been traversed. Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned representative at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-3894.

Respectfully submitted,


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